

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1541 of 1987

AND S.C.A. NOS.1541/87, 1842/87, 3182/87,  
1655/87, 350/87, 982/87, 1049/87, 1410/87,  
and 1991/87

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes
  - J
  2. To be referred to the Reporter or not? Yes
  3. Whether Their Lordships wish to see the fair copy  
of the judgement? No
  4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge?  
No
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Appearance:

S.C.A. NOS.1541/87, 1842/87, 3182/87 AND 1655/87 :

MR K.G.VAKHARIA, SR ADVOCATE WITH MR TUSHAR MEHTA FOR THE  
PETITIONERS

MR J.M.THAKOR, ADVOCATE GENERAL WITH MRS HARSHA DEVANI,  
AGP FOR THE STATE

MR RAJNI MEHTA FOR GENERAL INSURANCE CORPORATION OF INDIA  
MR J.D.AJMERIA FOR UNION OF INDIA

MR P.M.RAVAL, SR ADVOCATE FOR GUJARAT STATE COOPERATIVE BANK LTD  
MR SHIRISH JOSHI FOR DISTRICT COOPERATIVE BANK

S.C.A. NO. 1409/87, 1410/87 AND 1991/87 :

MR B.M.MANGUTIA FOR THE PETITIONER  
MR J.M.THAKOR ADVOCATE GENERAL WITH MRS HARSHA DEVANI,  
AGP FOR THE STATE  
MR RAJNI MEHTA FOR GENERAL INSURANCE CORPORATION OF INDIA  
MR J.D.AJMERIA FOR UNION OF INDIA  
MR P.M.RAVAL, SR ADVOCATE FOR GUJARAT STATE COOPERATIVE BANK LTD  
MR SHIRISH JOSHI FOR DISTRICT COOPERATIVE BANK LTD

qS.C.A. NO. 350/87 AND 982/87 :

MR S.K.ZAVERI FOR THE PETITIONERS  
MR J.M.THAKOR, ADVOCATE GENERAL WITH MRS HARSHA DEVANI,  
AGP FOR THE STATE  
MR RAJNI MEHTA FOR GENERAL INSURANCE CORPORATION OF INDIA  
MR J.D.AJMERIA FOR UNION OF INDIA  
MR P.M.RAVAL, SR. ADVOCATE WITH MR HARIN RAVAL FOR  
GUJARAT STATE COOPERATIVE BANK LTD

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CORAM : MR.JUSTICE N.N.MATHUR  
Date of decision: 07/08/96

#### JUDGEMENT

1. No case law, only verbal gymnastic, of course based on record. in this group of Special Civil Applications under the label of social action litigation filed by village level Primary Co-operative Societies engaged in the activities of Agriculture Credit to its farmer members echoing the grievance of not indemnifying the damages to their crop during the drought year of 1985, has raised key and substantial question for consideration among various topical issues hotly debated before me, thus,

"Whether under the Crop Insurance Scheme 1985-86, petitioners are entitled to damages on the basis of the calculations against the loan advanced from January 1985 to March 1985 and from 1st October, 1985 to 10th November 1985 in addition to admitted position of eligible claim during the period between 1st April 1985 to 30th September 1985."

Prefatory Note.

2. Ours is a agriculture dominated country. A majority of total population depend primarily on agriculture which lives in rural areas. Credit is needed

by rural population for meeting agriculture production as well as consumption requirements and as such during the pre-independence days village money lenders had monopoly of providing credit to poor farmers and agricultural laborers exploiting them to maximum possible. Since the land was the only almost security that the agriculturists had to offer, his failure to repay the loans secured against it meant in due course alienation of land and hence his means of livelihood. In course of time, new most powerful force emerged in the country side that of rich farmers "Kulaka". This class of farmers occupied dominant position in rural credit even pushing professional money lenders very much down the ladder. Their behavior was still worst than that of the professional money lenders. Various legislative enactments were taken to regulate money lending business. Debt Relief Acts were enacted to give some relief to farmers. But Legislative enactment did not yield desired effect on account of device of variety of legal camouflage for illegality. It was considered that the provisions of law were inadequate to tackle the evil of indebtedness. They were at the most corrective and not preventive measures. Keeping in view that the National Agricultural Development Policy rests on the principle of plan modernisation mechanism of output based on full utilisation of man power and equal access to opportunity to all class of farmers, it was thought to mobilize all rural resources through the Bank or otherwise. Emphasis was laid on adoption of integrated approach to the problem i.e. evolution of an integrated credit system for agriculture. There are two systems of agricultural credit viz. institutional and noninstitutional. Noninstitutional sector consists of money lenders as well as commission agents etc. Institutional sector consists of cooperative commercial banks and regional rural Banks etc. At the same time, thinking was in favour of promoting multi purpose primary cooperative societies in the rural areas. Cooperative system was recognized as an instrument of planned action more suitable for dispensation of agriculture credit. A recent development of significance in the rural credit field is of setting up of rural Banks. The rational behind setting up such Banks consists in the fact that for several years, State Policy in widening and intensifying the institutional coverage of rural credit laid emphasis on the development of cooperative credit structure as a major instrument of building up viable rural credit scheme. Various Committees were appointed by the Reserve Bank of India to study working of cooperative movement and its role in providing credit. The committee of "Taccavi" loans and cooperative credit, recommended that the cooperative is

to be accepted as an ultimate sole institutional agency for provision of agriculture credit. The government having accepted as a matter of policy need of linking orienting credit towards production programmes and repaying capacity an "Action Programme" for development of cooperative credit was formulated and circulated to the State Government of spelling out measures necessary in the direction of implementation. This "Action Programme" attached foremost importance to orientation credit production. It emphasized that

"Credit is to be production oriented and is to be determined on the basis of need and repaying capacity. Credit required for fertilizers, pesticides, seeds, etc., should be disbursed in kind and there should be seasonality in timing of disbursement of credit and its recovery."

3. The introduction of "Credit Loans" system was one of the main features of "Action Programme" for orienting credit production. Under the plan, production was the main purpose of arrangement of finance and short term loans were to be given on basis of anticipated crop. The loans were related to the estimated outlay in raising credits and recoveries were to be made as and when the crop was sold from proceeds of the sale. Under this system, credit requirements were to be made under three component formula:-

(i) The Initial cash component to take care of imputes required under traditional level of cultivation;

(ii) Second component to be provided in kind to cover additional inputs such as fertilizers, pesticides, insecticides, etc.

(iii) Cash component to be used for additional labour charges that may be needed for utilisation of imputes under second component.

4. The cultivator's credit need falls into three broad categories"

1. Long term for capital investment in agriculture such as, construction of tube wells, land levelling, terracing purchase of tractor and other costly machines. Long term loan is normally for a period of 5 to 15 years.

2. Medium Term:- For meeting outlet relating to replacement and maintenance of wasting assets

and for capital investment or purchase of comparatively small machines. Term loan is normally for 3 to 5 years.

3. Crop Loan:- mainly for financing current expenditure in connection with raising of crops.

5. The agriculture is fought for uncertainty arising among others from natural calamity such as drought, flood etc. Any such calamity destroys the crop and affect the cultivators' capacity to repay the loans. Thus, keeping all this in view, the Government decided to introduce comprehensive scheme for crop insurance which was announced by the Union Finance Minister in his budget speech in the year 1985-86, which is extracted as under:-

"A crop failure, in the event of a drought or flood, can have disastrous effect on the livelihood of our farmers and their families. The Government has, therefore, decided to introduce a comprehensive scheme of crop insurance. Henceforth, there will be a built-in insurance cover for all crop loans. The insurance cover will be provided upto 150 per cent of the crop loan. To begin with, the scheme will be extended to wheat, paddy, oilseeds and pulses. The insurance charges will be low. The marginal and small farmers will be subsidized to the extent of two-thirds of the insurance charges by Central and State Governments on a matching basis. Details of the scheme, which are being worked out, will be announced separately."

6. The details of the scheme were finalized in consultation with the Ministry of Finance and the General Insurance Corporation of India (hereinafter referred to as "GIC").

Brief outlines of the Crop Insurance Scheme :

7. The Central Government decided to introduce the scheme throughout the country commencing from "Kharif 1985". The scheme is being operated through GIC. The brief outline of the scheme is given as under:-

Object:-

(A) To provide financial assistance to the agriculturists in the event of failure of crops on account of famine, flood, cyclone and such other natural calamities.

(B) To make arrangement for providing credit to the farmers for the next sowing season in the event of the crop failure during the current season.

(C) To increase the production of food crops, pulses and oilseeds.

(1) This scheme is being operated by the General Insurance Corporation.

(2) The following crops are covered under the scheme.

(A) Paddy, wheat and Millets.

(B) Oilseeds and pulses.

(3) The farmers borrowing loans from the Coop. financing institutions, Commercial Bank, Regional Rural Banks are covered under the scheme. Almost, equal to 150% of the crop loan is eligible for insurance coverage.

(4) The risk under the scheme is in the ratio of 2:1 between G.I.C. and State Government.

(5) The premium rates are as under:-

(A) 2 percent of the insurance amount in the case of paddy, wheat and Millet.

(B) 1 percent of the insurance amount in the case of oilseeds and pulses.

(6) The amount of Insurance Premium for the crop covered under the scheme forms the credit limit and the same is deducted as premium amount while releasing the actual loan.

8. Thus, in brief this scheme covers crops of oilseeds, pulses, paddy and "Bajara". "The ratio of premium for crop of oil seeds and pulses is 1% while in the case of paddy and "Bajara" is 2%. The amount of insurance taken under this scheme is pagged at 1 1/2 times the amount of crop loan obtained by the farmers for raising the crop insured. Thus scheme is compulsory and the banks are given mandate to collect premium from the borrowers and remit the same to GIC. Under the scheme GIC to act as a leading Insurer. The State Government is to set up a State Crop Insurance Fund and to act as co-insurer to the extent of 33.1/3%. The scheme is to be administered jointly and in close collaboration of State Government. The scheme does not specify specific month

or period to be covered under the scheme. It only mentions the crop loans issued from "Kharif 1985". The Insurance Charges i.e. premium is to be included as an additional amount in the scale of business.

#### SEQUENCE OF EVENTS :

9. After declaration made by the Union Finance Minister in Parliament in February 1985 as a follow up action, the Government of India prepared a "Crop Insurance Scheme" which was discussed in a Workshop organized at New Delhi on 01.05.1985. This workshop was attended by Agriculture Production Commissioners (APC)/ Secretary (Agriculture)/ Secretary (Cooperation)/ Registrar of Cooperatives Societies, Managing Directors of State Co-operative Banks of States and Union Territories. The workshop was also attended by the representatives of Cabinet Secretariat, Ministry of Finance (Insurance Division), Banking Division, Planning Commission, Reserve Bank of India, NABAD and GIC. The Additional Secretary to the Government of India, Ministry of Agriculture Rural Development sent letter dated 3.5.1985 to all the Chief Secretaries of all the State Governments and Union Territories apprising them of the comprehensive crop insurance scheme and about the discussion held in the workshop. The State Governments were requested to take immediate action for adopting and implementing the new scheme from "kharif 1985" season. The State Governments were also advised to take steps to organize meeting of the State level Bankers Committees. It was further advised that the matter may be placed for discussion in the State Level Coordination Committee and if necessary, workshop on crop insurance may be organized. The General Manager, NABAD, also sent letter dated 7.5.1985 to the Managing Director, State Cooperative Bank in all the States and Union Territories and also the Chairman, Regional Rural Banks, informing that the crop insurance scheme has been finalized by the Government of India. It was made clear that the scheme of crop insurance essentially covers for the crop loans issued by the Bank and therefore, it is important that the Banks take full advantage of the scheme. It was further made clear that the loans already disbursed the insurance premium to be paid will have to be suitably adjusted out of the future installments due to be disbursed by sanctioning additional loan to the extent necessary. The Reserve Bank of India under further Instruction dated 6.7.85 advised All Indian Scheduled Commercial Banks to sanction additional loan for the Kharif Season 1985 to cover premium amount and remit it to Nodal offices. They were also asked to collect from

Branches/Nodal offices data on number of farmers and amount of crop loans covered under the scheme during "kharif 1985", with cropwise details and send the same to them by 13.9.1985. NABAD also sent further instructions with respect to the Crop Insurance Scheme to the Managing Directors, State Cooperative Banks of all States and Union Territories and the Chairman, Regional Rural Banks under the Communication dated 9.7.1985. On 17.7.1985, the National Conference on Crop Insurance Scheme was held at New Delhi under the Chairmanship of Secretary (Agriculture and Co-operation) which was attended by officers of the Ministry of Agriculture and Rural Development, Ministry of Finance (Insurance Division), Reserve Bank of India, GIC, representative from the State Governments and Union Territories and the State Cooperative Banks. Summary record of the discussion in the said Conference held on 17.7.1985 was sent for information to all the concerned. As per consensus arrived at, it was agreed to cover all the crop loans disbursed for specified crops from 01.04.1985 onwards and also to provide cut off date as on 31st October for sending proposals to GIC for "kharif" season. The State of Gujarat adopted the Resolution dated 01.08.1985 decided to implement the crop insurance scheme introduced by the Government of India for "kharif 1985" crops in the State of Gujarat in collaboration with the GIC. The State Government also constituted the Insurance Fund Committee under the chairmanship of the Additional Chief Secretary (Finance Department). On 19.10.1985, the Officer-in-charge, GIC, Ahmedabad sent letters to NODAL Offices/ Cooperative banks/ Commercial Banks/ TRBC, informing that for receiving declaration with remittance Insurance Charges for "kharif 1985" is 31.10.1985 and therefore, declaration for loans disbursed in September 1985 be sent to him by 07.10.1985 and further declaration for the loans disbursed in October 1985 be sent to him on or before 31.10.1985. The Officer-in-charge sent a letter to the Manager, Amreli District Co-operative Bank, advising them to cover the loans disbursed by them at the earliest date and send necessary declaration with remittance of the Insurance Charges. The Government of Gujarat, convened the meeting on 21.10.1985 under the chairmanship of K.G. Ramnathan, Secretary to the Government of Gujarat, Agriculture and Rural Development, to review implementation of the Crop Insurance Scheme in the State of Gujarat. This meeting was attended by the Dy. Director of Insurance, Dy. General Manager, NABAD, Manager, Gujarat State Cooperative Bank and the Managers, District Cooperative Banks. It was pointed out by the Chairman in the said meeting that even though the cut off date for sending declaration and the premium by the Nodal



Bank is 31.10.1985, most of the District Cooperative Banks have not sent necessary declaration and further the list of defined area for "Bajri" crop was received very late and therefore, the cut off date is further extended for a period of 10 days or so. In October 1985, the GIC received declarations from the NODAL Banks and the certificates were issued by the authorized persons of GIC certifying that loanee farmers are covered to the extent of 150% of the loans disbursed in terms of comprehensive crop insurance scheme as incorporated in the agreement entered into between GIC and the Head Office of the Bank concerned. The Registrar, Co-operative Societies, addressed a letter dated 23.10.1985 to the General Manager, Gujarat State Co-operative Bank Ltd., stating that in view of the decision taken in the meeting held at Gandhinagar on 21.10.1985, the last date for remitting premium and submitting declaration is 31.10.1985 and as such, necessary direction in this regard may be issued to the District Cooperative Banks. The State Co-operative Bank was also asked to impress upon the District Co-operative Banks that the scheme is compulsory and is useful for borrowing agriculturists. The Circular dated 26.10.1985 was also issued by the Gujarat State Cooperative Bank to all the District Central Cooperative Banks in which it was made clear that, as the current year is the first year of the insurance scheme under which the procedure has to be completed by 31.10.1985. The Director of Agriculture, sent letter dated 28.10.1985 to the Morangi Vividh Karyakari Sahakari Mandali Ltd., informing that the last date for remitting the premium amount and submitting declaration is 10.11.1985.

10. There was drought in various districts, and as such, the claims were raised for indemnifying the damages under the crop insurance scheme. The Chairman of GIC Shri Ashok Goyenka first time made press statement on 11.06.1986, stating that the claims filed under the newly introduced Crop Insurance Scheme for a total sum amounting to Rs 110.34 crores for "kharif 1985" crop which was more than 10 times of the premium of Rs. 9.33 crores. He admitted that heavy claims were on account of drought condition in the year 1985. He also said that nowhere in the world, crop insurance which was means of promoting agriculture was profitable proposition. He further clarified that under the crop insurance scheme, the Central Government bears 2/3rd of risk while the State Government bears 1/3rd of risk. He pointed out that, out of claims of Rs 101.3 crores, substantial claims were from State of Gujarat, amounting to Rs 73.55 crores. However the officer-in-charge, G.I.C. under impugned the Communication dated 31.10.1986, informed

that the loans disbursed prior to 01.04.1985 in the State of Gujarat can not be covered under the scheme. It was stated that the said stand was taken under the advice of the Government of India, Ministry of Agriculture. It was further stated that they are shortly arranging refund of Insurance Charges in respect of the same insurance of the said loans cancelling the insurance. Shri J.M. Patel, Chairman, Gujarat State Cooperative Bank Ltd. sent detailed letter dated 11.10.1986 to Shri C.N.S. Shastri, Managing Director, GIC, asking him to reconsider the issue of settlement of the insurance scheme against the premium collected in the month of October 1985 and upto 10.11.1985. Since the representation and other efforts did not yield, the writ petition was filed in April 1987.

CASE AND CONTENTIONS OF THE PARTIES :

SPL.C.A. NOS. 1541/87, 1842/87, 3182/87 AND 1655/87 :

11. This group of Special Civil Applications arises from the different districts of Saurashtra region. The S.C.A. No. 1541/87 and No. 1842/87 arise from Amreli district, S.C.A. No. 3182/87 from Bhavnagar district and S.C.A. No.1655/87 from Jamnagar district. In this group of the Special Civil Applications, the petitioners seek directions setting aside the decision of fixing the date of 01.04.1985 and 30.09.1985 as the cut off dates for the purpose of settling the insurance claims of the farmers for the insured crops for 1985 kharif season. The common grievance is that their claims have not been entertained by the respondents on the ground that the crop loans for kharif 1985 season commenced only after April 1995 and ends on 30.09.1985. It is stated that, as per practice and usages prevailing in the State of Gujarat, the kharif season commences from the month of January and extends upto November every year, depending on the rainfall in the area. It is also stated that, for the purpose of agriculture operations, right from the month of January, the farmers are required to take loans and advances from the Primary Co-operative Societies. In the year 1985, rainy season started late, the first rain had fallen somewhere in or about July 15, 1985 and because of the late rainy season, "kharif season" was also pushed back to the end of November 1985. It is also stated that the respondents accepted the premium on the basis of which the loans disbursed from the month of January 1985 to 10th November 1985 without raising any objection, as such, now they are precluded from rejecting their claims on the ground that the loans prior to 01.04.1985 and beyond 30.09.1985 are not covered under the same. The impugned action is malafide and

afterthought as the respondents - GIC did not anticipate drought in the first year and as such, in order to avoid liability, the cut off dates have been provided arbitrarily.

12. Mr K.G.Vakharia, Sr. Advocate appearing in this group of petitions has submitted that it is implicit in the comprehensive crop scheme as well as the follow up letters and circulars that sum insured was for 1985 kharif insured crops. The sum insured was to be calculated on the basis of crop loan in relation to kharif crops. The scheme was introduced as late as in the month of August 1985 and put into implementation somewhere in the month of October 1985 in the State of Gujarat. Still, all the concerned authorities treated the entire advances in relation to 1985 kharif insured crops for the purpose of collection of premium.

13. During the course of arguments, while reading the summary record of discussion in the National Conference on Crop Insurance held on July 17, 1985, at New Delhi, learned counsel in view of the recorded consensus that all crop loans disbursed for the specified crops from 01.04.1985 onwards should be covered under the scheme, has given up the claims for the period prior to 01.04.1985. He has vehemently argued that there is no mention of the cut off dates of 30th September 1985 in any of the letters or the circulars or the Minutes of any Meetings or Conferences. He further submits that, no cut off dates as 30th September 1985 was ever talked about, except in September 1986 when the liability was denied. He submits that the clue to know kharif period under the scheme is as to how the scheme was understood. He further submits that once the premium was accepted, it was not open for GIC to refund the premium and deny the liability fixed. It is also stated that GIC is only an instrumentality of the scheme of the Government of India. In order to substantiate the contentions, learned counsel has referred to various documents on record. He has heavily placed reliance on the summary on record of the Conference dated July 17, 1985 and submitted that, under clause (2) while it was agreed by all concerned that loan shall be disbursed from 01.04.1985, no outer limit of the period has been provided. He has further referred to sub-para (6) which, on the contrary, provides for cut off dates for sending proposals to GIC for kharif season as 30th October 1985. Mr Vakharia has also referred to the Dictionary meaning of "kharif" as given in the English Short Oxford Dictionary and the Gujarati Dictionary viz. Bhagwat Go Mandal.

14. These two Special Civil Applications arise from the Ahmedabad district. The say of the petitioners in this group of SCAs is that the Talukas of Sanand and Viramgam of Ahmedabad district were covered in respect of the crops of paddy and bajri. After referring the kharif crop insurance scheme, it is stated that an agreement came to be entered between the respondent No.1 General Insurance Corporation of India and the respondent No.2 Gujarat State Crop Insurance Fund and respondent No.5 The Gujarat State Co-operatives Bank Ltd, acting on behalf of the respondent No.6 i.e. Ahmedabad District Co-operatives Banks Limited. As per the agreement, the insurance coverage was provided. It is further stated that, as per the practice, the crop loan for kharif season is disbursed from January.

15. Mr S.K.Zaveri, learned counsel appearing for the petitioners submits that when the scheme was first adopted in Gujarat in August 1985, the District Banks were instructed to sanction additional loan amount to borrowing members to cover up the costs of insurance premium in respect of crop loans for the crops covered. The District Banks forwarded declaration including the loans disbursed from January 1985 and also paid the insurance premium accordingly. After having accepted the premium, after almost an year, in September 1986, the GIC has tried to return the premium when it had become clear that there was complete drought and full insurance coverage was required to be paid. Learned counsel has further stressed that the GIC and the funds are stopped from questioning the loan advanced by banks and credit societies from January which is the usage since long. Learned counsel has vehemently argued that the petitioners are entitled to insurance coverage during the period from January 01, 1985 to March 31, 1985. It is also argued by Mr Zaveri that the crop loan insurance is a matter between the Co-operative banks and the GIC and the intervention of the Union of India is uncalled for. Advancing the contentions, learned counsel submits that the GIC has not taken any independent decision in fixing the cut of dates, but has acted under the instructions of the Union of India. In view of this, the impugned decision is malafide and illegal.

SPECIAL CIVIL APPLICATIONS NO.1049/87, 1410/87 AND 1991/87 :

16. This group of Special Civil Applications arises

from the district of Bhavnagar. The case of the petitioners in these Special Civil Applications is almost the same of the earlier petitions.

17. Mr B.M.Mangukia, learned Advocate has taken entirely a different stand that from Mr Vakharia and Mr Zaveri. He submits that the scheme of 1985 is a crop insurance scheme and not crop loan insurance. He also submits that no time limit has been prescribed in the scheme and as such, the respondents cannot fix the time limit unilaterally. He further submits that once, rightly or wrongly, the proposals for insurance were accepted, and the GIC has agreed to indemnify, they cannot be permitted to go back without following the due process of law. Supporting the contentions of Mr Zaveri, Mr Mangutia submits that a plain reading of the impugned order dated October 13, 1986 clearly suggests that the GIC has taken a decision not to cover the loans disbursed prior to April 01, 1985 under the instructions of the Government of India, Ministry of Agriculture, which on face of it is illegal. The GIC has not taken the independent decision in the matter. Learned counsel has stressed that the cut of dates has been provided to escape the liability and as such, it is malafide.

THE STAND OF GUJARAT STATE CO-OPERATIVE BANK LTD :

18. Before stating the stand taken by the other respondents, it would be necessary to state the stand taken by the Gujarat State Cooperative Bank Ltd. for the reason that the State Cooperative Bank has supported the case of the petitioners. Mr P.M.Raval, Sr. Advocate has argued on behalf of the Gujarat State Cooperative Bank Ltd. The contentions raised by Mr Raval has been adopted by Mr Shirish Joshi appearing for the District Cooperative Banks.

19. Mr M.M. Vyas, General Manager, Gujarat State Cooperative Bank Ltd has filed an affidavit in S.C.A. No.1541/1987 which has been treated as a reply in all the other SCAs. Mr Vyas has stated in his affidavit that, in his capacity as the Chief Executive of the Gujarat State Cooperative Bank Ltd., he attended the National Workshop on crop insurance on May 01, 1985. He has stated that the comprehensive crop insurance scheme is essentially and basically a scheme prepared by the Government of India. A conference was convened not for any discussion but only for the purpose of giving information regarding the implementation of the scheme. It was stated by the Chairman that the implementation of the scheme during the

kharif 1985 was not subject to discussion as it had already been approved by the cabinet and only operational problems were to be sorted out. He has further stated that, at no point of time, it was ever clarified that the loans and advances only after April 01, 1985 and before September 30, 1985 will be covered. It is further submitted that entire loans and advances for notified kharif crop were covered under the crop insurance, the premium from the farmers were collected by the Primary Cooperative Societies on that basis. The premium so collected were paid to the General Insurance Corporation of India through the District Cooperative Banks. The GIC accepted the premium. With respect to the conference of July 17, 1985, Mr Vyas has stated that he attended the said conference. He had no say in the framing or preparing the scheme. All the participants were asked to report on the progress of the implementation of the scheme. He has further stated that the State Government adopted the scheme under resolution dated August 01, 1985. Even in the said resolution, the cut of dates as 1.4.1985 and 30.9.1985 have not been given. He has also referred to the letter dated 12/13th February 1987 of the Registrar, Cooperative Societies in which the action of arbitrary cut of dates without examining the issue on merits has been criticized. Mr Vyas has also stated that Gujarat State Cooperative Bank Ltd has made special efforts in ensuring the maximum coverage of the crop loan through the District Cooperative Bank in the State of Gujarat. It was on their insistence and advice the farmers had taken the crop insurance. It is submitted that if there was good rains at the relevant time, the 1985 kharif crop would not have failed and in that case, the GIC would have made profit out of the amount of premium paid by the farmers. However, for the reasons beyond the control of humanbeings, the 1985 kharif season had failed. There was failure of monsoon and as a result thereof, the farmers were seriously affected. Under the circumstances, there is a legitimate expectations of the farmers for the payment of their insurance claims.

20. Mr P.M. Raval, Senior Advocate arguing the State Cooperative Bank has given the background in which the scheme was framed. He has stressed that it is essentially a crop insurance scheme. The loan is only a standard. He has also submitted that there is nothing in the scheme suggesting the cut of dates. He has also pointed out that even in the resolution of the State of Gujarat dated 01.08.1985, no cut of dates have been provided. He has pointed out that the loans were disbursed even prior to April 01, 1985. He has also further pointed out that there is nothing new in the

scheme. The pilot scheme having failed, it was the first year of the new scheme. It is strenuously argued that the scheme was approved by the cabinet which did not provide for any cut of dates. The providing cut of dates at a later stage amounts to modification of the scheme which could not be done except the cabinet.

THE STAND OF THE UNION OF INDIA, GIC AND THE STATE GOVERNMENT :

GOVERNMENT OF INDIA :

21. Mr Alok Bhatnagar, the Under Secretary, Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation has filed an affidavit in reply in SCA No. 350/1987 which has been read in all the petitions on the request of the learned counsel for the parties. Mr Bhatnagar, referring the Workshop on May 01, 1985 and thereafter the proceedings of National Conference held on July 17, 1985, has submitted that it was agreed between all the parties concerned i.e. Reserve Bank of India, NABAD, State Governments, GIC, Banking and Financing Institutions that the scheme will cover the crop loans disbursed on and from April 01, 1985. In view of the said decision, Government of Gujarat also agreed to introduce crop insurance scheme in July 1985 for the kharif period of the said year keeping in mind that the scheme will cover the loan disbursed on and from 01.04.1985. A reference has been made to crop loan manual of the Agriculture Credit Department (ACD) of the Reserve Bank of India which lays down that the kharif loaning starts from April 01, 1985. It is asserted that GIC is the agent of the Government of India and as such, it is bound by the period of kharif as provided under the Manual of the Agriculture Credit Department (ACD). The practice and usage as alleged in the petitions with respect to the disbursement of crop loans of kharif season from the month of January is denied. It is stressed that the conference dated July 17, 1985 was attended by the representatives of the implementing States/ Union territories including the Government of Gujarat, as also representatives from the agencies involved in the implementation of this scheme. In the said Conference, unequivocally decision was taken that the loans, advances for crops covered under the scheme subsequent to 1.4.1985 would only be considered for the purpose of extending insurance cover envisaged in the scheme. The State of Gujarat adopted the scheme knowing fully well that the scheme does not cover the loan disbursement prior to April 01, 1985. Dealing with the scheme, it is pointed out that it is compulsory for all

the farmers availing crop loans from the concerned Institution, for raising wheat, paddy, millets, oilseeds and pulses crops. It is also stated that there is inbuilt insurance coverage as a part of crop loan for raising crops in the defined areas where the insurance scheme is extended. It is further stated that the loan amount for each crop for the given area is decided with reference to the "scale of finance fixed by a technical committee constituted from time to time for each districts in the State." The scale of advances comprised of cash and kind components. Giving the further details, it is pointed out that it is the sum which is insured and not crop raised which is covered under the scheme. It is denied that any decision was taken in the year 1986 providing the cut of dates. It is submitted that it was well known that the scheme will cover the loan distributed after April 01, 1985. It is also pointed out that out of the total indemnity claims paid by the GC of India to Rs 83 crores for kharif season 1985, share of the State of Gujarat was the highest i.e. Rs 53.55 crores. Looking to the unexpected huge claims from the State of Gujarat, a Central Team was deputed to examine the matter. It was found that in Amreli and Bhavnagar districts of that region, nearly loan of Rs 20 crores had been advanced fraudulently to the farmers without any justification during the period January to March 1985 when the scheme was not in operation and even, during the period of October to November 1985 by which time, the crop has either been harvested or were about to be harvested. It is further submitted that the Cooperative Credit Institutions, Commercial Banks and Regional Rural Banks in the State of Gujarat could not unilaterally bind the insurers for the purpose of crop insurance merely by completing procedural formalities regarding the loan and advancement unless and until such proposals were verified and found to be in order and further accepted by the insurers. It is submitted that the present petitions have not been filed by the farmers who can be the real claimants, but has been filed by the banking and some financial institutions or else agencies and/or intermediaries who have forwarded the proposals without proper scrutiny. If the proposals would have been scrutinised properly, the applications with respect to the loan for the period January to March 1985 would not have been accepted. That the preliminary objections have also been raised that the facts of the case, the petitions can be maintained only by the farmers and not by the ~petitioner societies. The second preliminary objection raised is that what is a kharif period is a serious disputed questions of fact which cannot be decided by this court while exercising the extra ordinary



jurisdiction under Article 226 of the Constitution of India.

22. Mr J.D. Ajmera, Additional Central Government counsel, while arguing all the contentions raised in the reply has further submitted that the GIC can not travel beyond the scheme of the Union of India as they are the only instrumentality of the Union of India. He has further submitted "Reading the letters and circulars on record and the guidelines of the Reserve Bank of India as contained in the Manual referred in the reply leads to the only conclusion that the coverage of the crop loan insurance was provided for the period April 01, 1985 to September 30, 1985.

GENERAL INSURANCE CORPORATION :

23. Mr A.C.Desai, Dy. Manager of the GIC of India has filed affidavit on behalf of the respondents - GIC. At the outset, a preliminary objection has been raised that the petitions involve disputed questions of facts and as such, this petition under Article 226 of the Constitution of India is not maintainable. The second preliminary objection raised is that the grievance with respect to the breach of contractual rights or enforcement of an agreement can be better decided by relegating the petitioner to the remedy of civil suit. The GIC has also placed reliance on the decision taken in the Workshop and the Conference wherein the decision was taken that the scheme will cover only loans distributed after April 01, 1985. Supplimenting the reasons for taking the decisions, it is stated that the duration of rain in Gujarat is so short that loan period beyond 1st April to 30th September is more than sufficient for genuine crop loans taken and advance by the banks for raising kharif crops. It is further submitted that the Government of Gujarat knowing the cropping pattern and short duration of rain in the State of Gujarat declared the loaning period for the kharif season 1986-87 as under :

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Srl.No.	Dates	Particulars
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01.	15.07.1986/87	Last date of first loanee
02.	15.09.1986/ 31.08.1987	Last date for final loanee to crops
03.	30.09.1986/87	Cut of dates for accepting declaration

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This clearly shows the cropping pattern for kharif season and loan advances for kharif season in Gujarat is certainly between April to September. It is also stated that the kharif crop means crops sown at the beginning of the rains and reaped during October onwards. This scheme covers notified kharif 1985 crops for which loans were advanced by the concerned agencies w.e.f. 01.04.1985. There was no question of introducing the scheme retrospectively from the month of January 1985. Any sort of arbitrariness on part of the insuring respondents has been denied. It is denied that, because of the alleged late rainy season, the kharif season was also pushed back to the end of November. It is also stated that, while receiving the premium, it was not known that it included the premium for the loan disbursed for the period not covered by this scheme. It is further stated that the Agriculture Department of the State of Gujarat carries on crop cuttings experiments and it was done so also for the kharif season 1985. The loss was ascertained based on the crop cutting experiments of the State of Gujarat and the claims were settled for the loans disbursed from April to September 1985 and not beyond that period, either earlier or later. The cropping pattern as given in the earlier part of the reply i.e. April to September has been accepted through out and is continued till today. The other allegations of malafides has been denied.

24. Mr Rajni Mehta relying on the various letters and circulars has submitted that it was known to all concerned before the State of Gujarat adopted the resolution to implement the crop loan insurance scheme that it covered only such loan which were given on or after 1st April 1985. He further relies on the Reserve Bank of India's manual on production paras 29 to 50. He has submitted that even if any premium accepted for the loan period either prior to 1st April 1985 or beyond 30th September 1985, the same would not get benefit of Insurance covered under the Scheme of 1985. He has submitted that, since it was first year and therefore, the local agencies without properly understanding, accepted the proposals and transmitted the same, but on that basis, no right can be created in favour of the petitioners. Mr Rajni Mehta has severely criticized the conduct of the Gujarat State Cooperative Bank Ltd. It is submitted that Gujarat State Co-operative Bank Ltd not being the petitioner cannot be heard in support of them. It is also submitted that the said Bank has tried to make out the grounds much beyond the contentions raised in the

petitions. learned counsel submits that the present writ petitions deserve to be rejected on the ground that it involves disputed questions of facts and further that it arises from a contractual rights, which cannot be decided under Article 226 of the Constitution of India.

THE STATE OF GUJARAT :

25. Mr J. K. Jani, Under Secretary, Government of Gujarat has filed a reply on behalf of the State of Gujarat. It is submitted at the outset that there is no infringement of legal rights and therefore, the petitions filed by the petitioners are misconceived and deserve to be rejected only on this ground. The another preliminary objection raised is that the petitions involves disputed questions of facts as the petitions are based on assumed practice and usage with regard to the commencement of the kharif season and the loaning activity of the kharif season which is purely a question of fact. The third preliminary objection raised is that the petitioners have no locus standi to file the present petitions, as the persons insured in the scheme are the farmers who would be entitled to the benefits of the scheme. It is stated that the paddy crop is sown by transplanting or drilling after onset of monsoon i.e. in or after 2nd fortnight of June and as such, the loan may be advanced at the earliest in the month of April, and not earlier to that. It is stressed that the idea of covering such loan under the crop insurance scheme is nothing but to take an undue advantage and to defeat the very objective of this scheme. It is also stated that the loan advancing agency is always free to advance loan, but the crop loan insurance can be utilised only for raising the crops. The reliance has been placed on all the letters and circulars referred to by the different parties and it is contended that it was agreed between the parties that the scheme shall cover the kharif period 1985 i.e. 01.04.1985 to 30.09.1985. It is also stated that the Government of Gujarat sanctioned the scheme of 1985-86 by resolution dated 01.08.1985 with clear in mind that the scheme is to commence from 1st April 1985 as agreed in the Workshop and the Conference at New Delhi. It is also stated that Sanand and Viramgam talukas were notified for kharif bajri and kharif paddy crops during the years 1985-86 and 1986-87. It is stated that sowing of kharif crop like paddy and bajri takes place only towards the end of June and July and therefore, it is not probable that a farmer would require a crop loan prior to April. The two SCAs arising from the districts of Ahmedabad are only with respect to the crops of paddy and bajri and in that event, there is no question of disbursement of crop

loan prior to April 1985.

26. Mr J.M. Thakore, learned Advocate General, arguing for the State Government, submits that at the first instance, the writ petitions deserve to be rejected as it involves disputed questions of facts. Ordinarily, it will not be possible for this Court on the basis of slender evidence to return a finding as to what exactly is the kharif season. In alternative, it is submitted that in case, this Court proceeds to decide the questions on the basis of material on record, it is evident from the letters and circulars that it was understood between the parties that the kharif period for the year 1985 was between April 01, 1985 to September 30, 1985. Learned Advocate General has referred to the Manual on Production - Oriented System of Lending for Agriculture issued by the Reserve Bank of India, Agriculture Credit Department, Bombay. The part-I of the Manual deals with the crop loans. He has referred to para-35 which provides time schedule. It is provided that an important requirement of the crop loan system is that all necessary procedural formalities should be so planned as to ensure that credit is dispensed to members at the time they need it most. Learned Advocate General has also referred to para-50 which speaks that the problem of facing suitable out dates for repayment and considerable periods drawals against kharif limit may be permitted sometime in April or May and individually allowed option to avail himself of the cash and kind limits till September. Learned Advocate General submits that the manual has been prepared by the Reserve Bank of India on incentive survey and investigation by the experts in the field, and as such, it is safe to accept the period of kharif suggested and provided in the Manual. Thus, the date fixed by the Union of India and the GIC i.e. April 01, 1985 to September 30, 1985 is not only as per the agreed period evident from the letters and circulars, but also as provided under the Manual on Production issued by the Reserve Bank of India. In view of this, learned Advocate General submits that this group of S.C.As. deserve to be rejected.

#### CONCLUSIONS :

27. I have given thoughtful and anxious consideration to the contentions raised by the learned counsel for the parties. Though the point raised is short, but it is not easy to decipher as to what exactly was the period of kharif loan advancement for the season 1985-86. In order to know what was the kharif period in the year 1985, it is necessary to embark upon an inquiry as to how the scheme

and the period was understood between the parties. In order to better appreciate the controversy. I have undertaken a study of the background in which the scheme was prepared. However, before proceeding with the merits of the case, I shall first deal with the preliminary objections raised by the learned Advocate General and Mr Rajni Mehta, learned Advocate for the GIC.

28. The first preliminary objection is that it would be inappropriate for this Court exercising the powers under Article 226 of the Constitution of India to embark upon an inquiry which essentially involves disputed question of facts and the petitioners be relegated to the remedy of civil suit. In my view, the preliminary objection is not sustainable. It is not an absolute rule that the High Court cannot enter into a question of fact. If a question can be decided on the basis of undisputed material on record without necessity of recording of evidence, and facts of the case if so demands, the writ Court may undertake the exercise. In the instant case, the Scheme does not indicate the exact kharif period, thus, the clue can be to know how the parties understood the kharif period in the year 1985, which can be done by reading and analysing the undisputed documents on record. There is sufficient material placed on record by the parties to ascertain the understanding of the parties. In view of this and further, keeping in view the admitted fact that the farmers faced drought in the year 1985, and that the petitions are pending before this Court for last more than 10 years, I do not consider it appropriate to relegate them to the remedy of civil suit.

29. The second preliminary objection raised is that the petitioners - co-operative societies have no locus-standi to maintain the present petitions as under the scheme of 1985, it is the individual farmers who were provided the Insurance Cover. In my view, this preliminary objection is also not sustainable. The petitioners are primary co-operative societies and they are engaged in the activities of giving agriculture credits to their members who are farmers. It may not be possible for every farmer to approach to this Court and as such, the Cooperative Societies who have been given the mandate to undertake the successful implementation of the comprehensive crop insurance scheme, can ventilate the grievances on behalf of the farmers. It may also be stated that, in the present petitions, there is no claim for payment of money, but the prayer is against the arbitrary decision excluding the period between January 01, 1985 to March 31, 1985 and October 01, 1985 to November 10, 1985 for the purpose of deciding the claims

of the farmers. This being the common grievance of the claimants, the petitions can be maintained by the preliminary co-operative societies.

30. Coming to the merits of the case, the prefatory note clearly indicates that continuous efforts were made to liberalize the farmers from clutches of money lenders. Various credit schemes were evolved. Emphasis was also laid in making schemes production oriented. The scheme of 1985 was evolved to overcome the disasters effect on the livelihood of the farmers and their families on account of failure of the crop in event of drought or flood. While giving benefit to farmers, the other object of the Scheme is to increase the production of food crops like pulses and oilseeds. The study of the scheme also shows that Central Government bears 2/3rd of the risk, while State Government bears 1/3rd of the risk. The State Government has constituted a State Crop Insurance Fund Committee under the Chairmanship of Additional Chief Secretary, Finance. The amount of Insurance Premium for the crop covered under the Scheme forms the credit limit and the same is deducted as premium amount while releasing the actual amount. Thus, the Scheme is essentially of Union of India, and the G.I.C. is only its agent or instrumentality. Though the Scheme is administered jointly by the State Government and G.I.C., keeping this in view, I proceed to analysis the undisputed material on record.

31. After the announcement made by the Hon'ble Minister in the Parliament in the year 1985, the first circular was issued on May 03, 1985 by the Additional secretary, Agriculture Ministry, Government of India. In para-2 of the said circular, it is stated that the new comprehensive scheme is to be implemented from kharif 1985 season. The State Governments were directed to set up a state crop insurance fund with an initial capital and indicate the amount subscribed by the State Governments to the funds. It was also stated that the Central Government will release an equal amount to the corpus of the fund. The scheme was to be administered jointly by the State Government and the GIC. A National conference was convened under the Chairmanship of the Secretary, Agriculture and Co-operation on July 17, 1985, at New Delhi. The summery record of discussion in the said conference has been placed on record in S.C.A. No. 350/87. A list of participants is appended to the summery record, which indicates that this conference was attended by the officers of the Ministry of Agriculture and Rural Development (Department kof Agriculture & Co-operation), the Department of Rural Development,

Ministry of Finance (Insurance Division), IASRI PUSA New Delhi, Reserve Bank of India, National Bank of Agriculture and Rural Development (NABAD), General Insurance Corporation of India (GIC), Officers of the various State Governments including the State of Gujarat. Shri K.V.Bhanujan, Secretary, Agriculture Rural Development and Shri R.L.Shah, Additional Director of Agriculture, sensus attended on behalf of the State of Gujarat. The officers of the State Cooperative Banks also attended the conference. Shri M.M.Vyas, General Manager, Gujarat State Cooperative Bank, Ahmedabad was also present. The presence of the officers of the State Cooperative Bank, Ahmedabad is suggestive of the fact that they were party to the decision taken in the said conference. It is ofcourse true that Mr M.M.Vyas in his affidavit has stated that the conference was convened only for the purpose of giving information regarding the implementation of the scheme. He has also stated that the implementation of the scheme through the kharif 1985 was not subject of discussion as the same had already been approved by the cabinet and only operational problems were to be sorted out. He has also stated that, at no point of time, it was ever clarified that the loans and advances will cover only the period beyond April 01, 1985 and before September 30, 1985. Thus, according to Mr Vyas, the conference was convened only for discussion to sort out the operational problems. The statement of Mr.Vyas does not advance the case of the petitioners as discussion on operational problems will obviously include the period for advancement of loan under the Scheme. A reading of the summery record shows that there was discussion on this aspect. There is no reason to doubt the statement of high Government official of the status of Secretary to the Government of India, who presided the Conference. He being the Chairman of the Conference has said that the consensus among all concerned was to cover the loan disbursed for specified crops on April 01, 1985 and onwards. Thus, there can be no hesitation in arriving at the conclusion that in the said conference which was attended by all concerned including the representatives of the State of Gujarat and the Gujarat State Cooperative Bank, a decision was taken to provide April 01, 1985 as the date of commencement of the Scheme of 1985. It may further be noticed that while under sub-clause (2), cut off date has been given April 01, 1985, the date for disbursement of crop loans, and the cut of date for sending the proposals under the clause (6) has been given as October 31, 1985. For the ready reference, clause (2) and clause (6) under the heading conclusions recorded by the Chairman reads as follows :

"Clause (2) : All crop loans disbursed for the specified crop on April 01, 1985 onwards should be covered under the scheme."

"Clause (6) : Cut off dates for sending the proposals to the GIC for kharif season would be October 31, 1985."

As it was agreed between all the State Governments in the said conference to implement the new comprehensive crop insurance scheme, the State of Gujarat adopted a resolution dated 01.08.1985 to implement the scheme from the kharif season of 1985. It is further worth noticing that, in the said resolution, the cut of dates of April 01, 1985 and October 31, 1985 or September 30, 1985 have not been given, obviously because the decision in that regard had been taken in the Conference at the National level. The State of Gujarat also by the said resolution constituted a State Insurance Fund Committee under the Chairmanship of the Additional Chief Secretary, Department of Finance, and the Secretary, Agriculture Rural Development as the Members. Among others, one of the members is the representative of the state Cooperative Bank. It was also resolved that the committee will review the implementation of the scheme and will settle the issue arising at different levels. Another meeting was held under the Chairmanship of Shri K.G.Ramnathan, Secretary to the Government of Gujarat, Agriculture and Rural Development Department, on October 21, 1985. This meeting was attended among others by the General Manager, GIC, Mr R.N.Shah, Additional Secretary of Agriculture, Mr S.S.Vyas, Manager, Gujarat State Cooperative Bank and Managers of all the District Cooperative Banks. In the said meeting, it was pointed out by the chairman that even though the cut of dates for sending the proposals and premium by the NODAL banks is 31st October 1985, most of the District Cooperative Banks had not sent their declarations and premium amount and as such, appreciating the causes of delay, the cut off dates may be extended by another 10 days. It was further stressed that all the NODAL banks should ensure that the necessary declarations for the specified crops in specified defined areas with premium amounts are sent to GIC on or before the cut of date. It is thus evident that so far as the date April 01, 1985 is concerned, there was absolutely no discussion and this fact suggests that all concerned accepted the date as per the consensus arrived in the conference of July 17, 1985 at New Delhi. So far as the cut of date for outer period is concerned, it was also understood as October 31, 1985. This was the reason that the question came up for consideration as to enlarge the date by 10 days. It is contended by the



respondents that the 31st October 1985 was not the cut of date for the kharif period, but it was in fact the date for receiving the necessary declarations and the premium amount. On reading of the scheme and the correspondences and the records, no such distinction can be made. The decision to extend the period was taken, on the premises that it was understood between all concerned that 31st October was the outer cut of date of the kharif period 1985. The officer in-charge of the GIC in his letter dated 04.09.1985 to all the NODAL officers, Cooperative Banks/ Commercial Banks, asked them to send the declarations for each crop of ground nut and paddy separately for each notified area together with the remittance of insurance charges in favour of the GIC of India, account payee, central crop insurance fund by the 15th September 1985, in case where the amount of loan has been disbursed upto 31st August 1985 and in case of loan disbursed in September 1985, latest by 7th October 1985 and further loan disbursed in October 1985, on or before 31st October 1985. There is a reminder on the same line under communication dated 19.10.1985. The Gujarat State C-operative Bank under letter dated 26.10.1985 addressed to all Managers, District Central Cooperative Banks, said that, as the current year is the first year of insurance scheme, under which the procedure is to be completed by 31st October 1985 and as such, all formalities be completed and send the declarations and premium before the extended cut of date i.e. 09.11.1985. There is an identical letter of the Department of the Co-operation, Government of Gujarat, addressed to the General Manager, Gujarat State Cooperative Banks Ltd. The Director of Agriculture in his communication dated 28.10.1985 addressed to the Secretary, Morangi Vividh Karyakari Sahakari Mandali Ltd. pointed out that the last date for remitting the premium amount and submitting the declaration is 10.11.1985. NABAD in its letter dated May 07, 1985 addressed to the Managing Directors of all the State Cooperative Banks in all the States and the Chairman of the Regional Rural Banks, advised that as the Scheme of 1985 is essentially an insurance cover for the crop loans issued by the banks and therefore, it is important that the banks takes full advantage of the Scheme. It was further instructed that the loans already disbursed, the insurance premium paid may be suitably adjusted out of the future instalments due to be disbursed by sanctioning additional loan to the extent necessary. The NABAD in its letter dated 9th July 1985 advised the Cooperative Banks and the Regional Rural Banks in all the States to sanction additional loan to cover the premium amounts and remit it to the NODAL offices, keeping in view the fact that the 1985 being the

first year of the scheme of 1985, arrangements may not have been made by the State Government to keep advance deposits of the subsidy with the bank. The Reserve Bank of India in its letter dated 6th July 1985 to all the Chairman/ Managing Directors of all Indian Scheduled Commerical Banks also advised to sanction additional loan to cover premium amount and remit it to the NODAL offices. They were also advised to collect from the Branches/NODAL Offices DATA on number of farmers, an amount of kharif loans covered under the scheme during the kharif 1985 with cropwise details and send the same to them by 30th September 1985. It may be stated that the date 30th September 1985 has been referred in this letter in a different context i.e. only with respect to the collection of the statistics. Except this letter, that date 30th September 1985 does not find place anywhere. There is a letter dated 12th February 1987 of the Registrar, Cooperative Societies, State of Gujarat, addressed to GIC in which a request has been made that the representation of the Gujarat State Cooperative Bank may be considered with respect to the fixing of the cut of dates for the kharif 1985. It is stated that, an arbitrary cut of date for 01.04.1985 could not have been adopted without examining the issues on merits. So far as this document is concerned, it is contended by the learned Advocate General that the view expressed by the Registrar is not the view of the State Government. Since there is a dispute with respect to that document, I would prefer to keep this document out of consideration.

32. The respondents have tried to justify the date of 30th September on the ground that the Government knowing the cropping pattern in the State of Gujarat and knowing the duration of rain, declared the loaning period for the season 1986-87 providing the cut of date as 30th September 1986 and this has been accepted in all the subsequent years. The learned Advocate General has also referred to the Manual on Production Oriented System of lending of agriculture issue by the Reserve Bank of India, Agriculture Credit Department Bombay. He has referred to para-35 which provides the time schedule. It is provided that an important requirement of the crop loan system is that all necessary procedural formalities should be planned as to ensure that the credit is disbursed to members at the time they need it most. Following is the Schedule provided for the kharif season in the said Manual :

- (i) Fixation of the scales of finance                      December-  
for different categories of crops                      January  
and communication to all concerned.

(ii) Preparation of credit limit statements, their consideration by the managing committee of societies and forwarding applications to the bank. January February

(iii) Sanction of credit limit statements by the central co-operative bank. March

31. On the basis of the aforesaid Schedule, it is contended that the schedule suggests that the disbursement of the loans is to commence from the month of April and ends in September for kharif season. Thus, according to the respondents, the cut of dates April 01, 1985 to September 30, 1985 are justified not only from the letters and circulars, but also from the Manual on Production issued by the Reserve Bank of India. In my view, the Schedule provided under the said Manual is not of much assistance in the present controversy, as there is no reference of the Manual in the proceedings of the Conference or Workshop and so, as in any communication or circular. How the period was understood in the subsequent years can also not have much bearing on the question posed. Simply because the period April to September was accepted as kharif period in 1986 and subsequent years, it cannot be said that parties also understood the said period for the year 1985. The loans were advanced only during the period April to September in the year 1986 and subsequent years, as such, there could be no difficulty in accepting the said period for the Kharif Crop Insurance Scheme, but in the year 1985, loans were advanced upto November. It may also be noticed that the date 30th September 1985 does not find place in any of the correspondence or minutes of the conference of the year 1985. On the contrary, the 31st October 1985 is the last date given for the declaration and payment of the premium finds place in clause (6) of the summary record of the conference held on July 17, 1985. This has been referred as a cut of dates in all the subsequent letters and circulars issued by the State Government, Reserve Bank of India, NABAD and GIC. Under the scheme, the premium is to be paid at the time of advancement of the loan, the date of declaration and the date of the cut of period, has to be construed as same. Thus, when the date was extended to 10th November 1985, for submitting the declaration and the premium, it must be construed that between the parties, it was understood that the cut of period for the kharif 1985 is extended upto 10th November 1985. Reverting to the question of opening date from the undisputed material discussed

above, it clearly emerges that 1st April 1985 was understood between all the parties concerned the date of commencing the kharif period 1985. This consensus is further corroborated by the "Manual" referred by the learned Advocate General. However, it is contended by Mr K.S.Zaveri that the kharif period in the year 1985 should also include the period commencing from January 1985 as the loans were disbursed in the Talukas of Sanand and Viramgam in January 1985. It is contended that the GIC having accepted the premium, after almost a year in September 1986, tried to return the premium when it had become clear that there was complete drought and full insurance coverage was required to be paid. There is no substance in the contentions raised by Mr Zaveri. The petitioners in S.C.A. No.350/87 and 982/87 might have been advanced loans in the month of January 1985, but it cannot be said that it was for the kharif 1985. It is not in dispute that the declarations were made and the premiums were paid after August 1985 i.e. after the drought had become known to everyone. Therefore, it cannot be said that the GIC tried to return the premium when it had become known that there was complete drought and full insurance coverage was required to be paid. The another contention of Mr Zaveri is that, as per agreement, GIC was under obligation to indemnify the damages and the Union of India had no business to instruct the GIC not to provide the kharif period of 1st April 1985 to 30th September 1985. There is no substance in the said contention raised by Mr Zaveri, as I have taken the view that GIC is the only instrumentality of the Union of India in the matter of subject Scheme. Thus, it emerges from the aforesaid discussion that the period 1st April 1985 to 10th November 1985 was the period understood between all concerned for indemnifying the claim under beneficial Scheme known as Kharif Crop Insurance Scheme 1985. The respondents arbitrarily without any valid basis, fixed the cut of date of 30th September 1986.

32. It is next argued by Mr B.M.Mangukia that Kharif Crop Loan Insurance Scheme 1985 is not a Crop Loan Insurance, but in fact, a Crop Insurance. This broad question is not required to be decided, in this group of Special Civil Applications, as presently the only question involved is as to "what is the kharif period?" It is further argued that once having accepted the declarations and the premium, GIC could not refund the premium without hearing the party adversely affected. Having examined the Scheme, in my view, in stricto sensu, Kharif Crop Insurance Scheme, so far as the year 1985 is concerned, is not a Insurance Scheme. The contract of

insurance is virtually a contingent contract. It comprises of contract in which one party agrees to pay a given sum upon happening of a particular event in consideration of payment of smaller sum. In the instant case, it is not in dispute that the drought was known to all latest by August and the declarations and premiums were accepted upto 10th November. Thus, the small sum known as premiums were paid after the happening of the event. In view of this, it can not said to be a contract of Insurance. However, the State Government, the Union of India or the General Insurance Corporation of India have not raised such a technical plea and in fact, substantial claims of the period April to September 1985 have been accepted. The farmers were persuaded to take advantage under the Kharif Crop Insurance Scheme 1985, knowing the situation of drought, as the Government or its instrumentality at the Central or State level wanted to help the farmers, may be in the name of Insurance or otherwise. In view of this, there was no question of hearing the affected party before taking decision to return the premium.

33. Before parting with, it may be made clear that the claimants will not be entitled to interest on the sum which may be determined, while deciding the claims, in pursuance of this judgement. I have said that the Kharif Crop Insurance Scheme 1985, for the year 1985 in stricto sensu is not an Insurance Scheme, and as such, they are not entitled to claim as of right for the year 1985. It may also be said that one of the objective of the Scheme is to make arrangement for providing credit to the farmers for the next sowing season in event of crop failure during the current season. It is not the case of the farmers that they could not make arrangement on account of drought in the year 1985 for getting credit for the next season.

34. In view of the aforesaid, this group of Special Civil Applications are partly allowed. The respondents are directed to settle the insurance claims for the insured crops in respect of kharif 1985 considering the period of crop loan disbursements between April 01, 1985 to November 10, 1985 within a period of three months from the date of receipt of the writ. Rule made absolute to the aforesaid extent. No order as to costs.

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